

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35696

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 328
	)	
Plaintiff-Respondent,	)	Filed: January 27, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
MICHAEL J. OVERHOLSER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Judgment of conviction and sentences for felony possession of a controlled substance, misdemeanor possession of a controlled substance, possession of drug paraphernalia, transporting an open container of alcohol, and failure to provide proof of insurance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge Pro Tem

Michael James Overholser appeals from his judgment of conviction and sentences for felony possession of a controlled substance, misdemeanor possession of a controlled substance, possession of drug paraphernalia, transporting an open container of alcohol, and failure to provide proof of insurance. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

After conducting a routine traffic stop, a police officer discovered open containers in Overholser's vehicle. The officer then conducted a background check and discovered that Overholser had two outstanding warrants for his arrest. Overholser was arrested on the outstanding warrants and the officer searched the vehicle incident to Overholser's arrest. During

the search, the officer discovered marijuana, methamphetamine, and a marijuana pipe. Overholser was charged with felony possession of a controlled substance, I.C. § 37-2732(c); misdemeanor possession of a controlled substance, I.C. § 37-2732(c); possession of drug paraphernalia, I.C. § 37-2734A; transporting an open container of alcohol, I.C. § 23-505; and a second offense of failure to provide proof of insurance, I.C. § 49-1232.

Prior to trial, the state advised the district court of its intent to elicit testimony that Overholser was arrested on two outstanding warrants in order to provide a justification for the officer's search of the vehicle. Overholser objected on the grounds that the evidence was unduly prejudicial under I.R.E. 403.<sup>1</sup> The district court overruled the objection and indicated that it would give a limiting instruction that the evidence was only to be considered to show the context for the officer's search. A jury found Overholser guilty of all charges. The district court sentenced Overholser to a unified term of four and a half years, with a minimum period of confinement of one and a half years, for felony possession of a controlled substance. The district court also imposed concurrent terms of six months for each of the remaining charges. Overholser filed an I.C.R. 35 motion for reduction of his sentences, which was denied by the district court. Overholser appeals.

## **II.**

### **ANALYSIS**

#### **A. Evidence of Outstanding Warrants**

Overholser argues that the testimony concerning his two outstanding warrants was irrelevant pursuant to Rule 401 and 402, was unduly prejudicial pursuant to Rule 403, and was inadmissible propensity evidence pursuant to Rule 404. In his reply brief, Overholser concedes that his arguments that the evidence was prohibited by Rule 401, 402, and 404, are without merit pursuant to the recent Idaho Supreme Court opinion in *State v. Yakovac*, 145 Idaho 437, 180 P.3d 476 (2008). Therefore, we only address Overholser's claim that the prejudicial effect of the

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<sup>1</sup> Idaho Rule of Evidence 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

evidence of his outstanding warrants substantially outweighed its probative value pursuant to Rule 403. A lower court's determination under Rule 403 will not be disturbed on appeal unless it is shown to be an abuse of discretion. *State v. Enno*, 119 Idaho 392, 406, 807 P.2d 610, 624 (1991); *State v. Clark*, 115 Idaho 1056, 1059, 772 P.2d 263, 266 (Ct. App. 1989).

Prior to trial, the state advised the district court of its intention to introduce evidence of Overholser's outstanding warrants in order to provide the context for his arrest and the subsequent search of his vehicle. Overholser objected on the basis that the evidence was unduly prejudicial. The district court ruled that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice because any potential prejudice could be eliminated by a limiting instruction. No limiting instruction was given contemporaneously with the testimony of Overholser's outstanding warrants at trial. However, Overholser does not challenge the district court's failure to give a limiting instruction. Rather, Overholser argues that, without the limiting instruction, the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Specifically, Overholser contends that the evidence had no relevance and, therefore, very little probative value. Additionally, Overholser claims that the evidence created a high risk that the jury would convict him because he was a "career criminal."

We first consider Overholser's argument that, pursuant to Rule 403, the evidence had little probative value because it was not relevant. The Idaho Supreme Court has recently considered the use of evidence of outstanding warrants to justify an arrest and subsequent search leading to the discovery of contraband. *See Yakovac*, 145 Idaho 437, 180 P.3d 476. In that case, Yakovac was arrested on two outstanding warrants and officers discovered methamphetamine while conducting a search incident to arrest. In *Yakovac*, this issue was raised in the context of a claim of ineffective assistance of counsel in an application for post-conviction relief. However, the Court's holding is applicable to the present facts. Regarding the relevancy of the warrant evidence, the Court held:

The warrants were relevant evidence inasmuch as they were of consequence to the search and subsequent discovery of the pipe underlying Yakovac's charge of possession of methamphetamine. That is to say, the warrants were not relevant to the possession of methamphetamine charge itself, but rather to explain the police officers' actions. The pipe was found during a search incident to arrest. . . . Yakovac's arrest due to the outstanding warrants

explains why the search incident to arrest leading to the discovery of the methamphetamine was conducted.

*Id.* at 446, 180 P.3d at 485. Accordingly, the evidence of Overholser's outstanding warrants in this case was relevant and had probative value to explain the reasons justifying the search of Overholser's car and subsequent discovery of contraband. The lack of a limiting instruction did not make the evidence irrelevant and cause its probative value to become substantially outweighed by unfair prejudice.

We next consider Overholser's argument that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice due to the high risk that the jury would convict him because he was a "career criminal." In the context of Rule 404 propensity evidence, the Supreme Court in *Yakovac* held that the outstanding warrants were not offered to prove that the defendant had a criminal character or propensity to possess narcotics. *Id.* at 445, 180 P.3d at 484. Furthermore, the Court found it significant that the discussion of the warrants did not include any mention of the underlying crimes. *Id.*

Overholser has withdrawn his specific argument that the evidence of his outstanding warrants violated Rule 404. However, the Supreme Court's holding applies equally to Overholser's related reasoning that the evidence of his outstanding warrants was unduly prejudicial because of the risk of conviction based on his criminal propensity. As in *Yakovac*, the evidence of Overholser's outstanding warrants was not used to prove a criminal disposition. The warrants were given brief mention by the officers who testified at trial as part of a longer narrative of the events surrounding Overholser's arrest and the search of his car. When used in this manner, the evidence did not create a high risk of conviction based on criminal character. Accordingly, the risk of unfair prejudice did not substantially outweigh the probative value of showing the reason for the officer's search.

Overholser finally argues that the result of his trial rested on the jury's determination of his credibility which was impaired by the evidence of the outstanding warrants. Overholser testified at trial that he had no knowledge of the methamphetamine in his car. The mention of Overholser's outstanding warrants justifying his arrest and the subsequent search of his car did not speak to his character for truthfulness. Therefore, the evidence did not create any prejudice, much less substantial prejudice, in this regard.

## **B. Sentence Review**

Overholser argues that his sentences are excessive under any view of the facts. Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

## **III.**

### **CONCLUSION**

The probative value of the testimony of Overholser's two outstanding warrants presented as a justification for his arrest and the subsequent search of his car was not substantially outweighed by the danger of unfair prejudice. Therefore, the district court did not abuse its discretion by allowing its admission. Overholser's sentences are not excessive. Accordingly, Overholser's judgment of conviction and sentences for felony possession of a controlled substance, misdemeanor possession of a controlled substance, possession of drug paraphernalia, transporting an open container of alcohol, and failure to provide proof of insurance are affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**